

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 31 2008

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0271-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
NEWTON WRIGHT ARMSTRONG, JR.,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR99026051

Honorable Stephen F. McCarville, Judge

REVIEW GRANTED; RELIEF DENIED

Newton Wright Armstrong, Jr.

Florence
In Propria Persona

E S P I N O S A, Judge.

¶1 Pursuant to a plea agreement, petitioner Newton Armstrong, Jr. was convicted of attempted sexual conduct with a minor, sexual abuse, and attempted child molestation, all dangerous crimes against children. The trial court suspended the imposition of sentence on the first two offenses and placed Armstrong on lifetime probation but sentenced him to an eight-year term of imprisonment for attempted child molestation. On June 15, 2007,

seven years after he was sentenced, Armstrong filed his first notice of post-conviction relief, pursuant to Rule 32, Ariz. R. Crim. P. The trial court summarily dismissed the notice as untimely, and this petition for review followed. We will not disturb a trial court's denial of post-conviction relief absent a clear abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 In its ruling dismissing Armstrong's notice of post-conviction relief, the trial court found "that the Notice does not comply with the provisions of Rule 32.2b. Specifically, the defendant has not stated the specific exception under subparagraph a, nor does the notice contain any meritorious reasons why the claims were not raised in the Defendant[']s appeal or in a timely manner." Rule 32.4(a), provides that, in noncapital, of-right cases, the notice of post-conviction relief must be filed within "ninety days after the entry of judgment and sentence." Armstrong obviously filed his notice long beyond the ninety-day period. Rule 32.2(b), the rule addressing preclusion, provides that an untimely notice of post-conviction relief "must set forth the substance of [the] specific exception [to preclusion] and the reasons for not raising the claim in . . . a timely manner." Here, Armstrong did not explain why he had waited seven years to raise the three exceptions to preclusion he checked off in his notice, as Rule 32.2(b) requires. Rather, in the space on the notice that asked him to provide "the reasons for not raising the claim in . . . a timely manner," he launched directly into his argument that placement on lifetime probation constituted cruel and unusual punishment.

¶3 Because the trial court did not abuse its discretion by dismissing Armstrong's notice of post-conviction relief, we grant the petition for review, but we deny relief.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge